

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STEVEN A. CUCULICH, as Trustee of Inter
Vivos Tr! II FBO The Cuculich Family,
Plaintiff,
-against- Case No.
1:21-cv-6752-SLC
JOHN Z. RIGOS,
Defendant.
-----X

DATE: December 19, 2022

TIME: 11:00 a.m.

EXAMINATION BEFORE TRIAL of a
Nonparty Witness, ROCCO DiSPIRITO, taken by
the Plaintiff, pursuant to a Subpoena, held
via virtual Zoom, before Francine Delfino,
a Notary Public of the State of New York.

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A P P E A R A N C E S:

MOREA SCHWARTZ BRADHAM FRIEDMAN & BROWN,
LLP

Attorneys for the Plaintiff
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Attorneys for the Nonparty Witness
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BY: EDWARD BAILEY, ESQ.

ALSO PRESENT:

John Z. Rigos, Defendant

* * *

F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

1 R. DiSPIRITO

2 R O C C O D i S P I R I T O, called as a
3 witness, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. BRADHAM:

8 Q. Please state your name for the
9 record.

10 A. Rocco DiSpirito.

11 Q. What is your present address?

12 A. 511 Avenue of the Americas,
13 Suite 367, New York, New York 10011.

14 MR. BAILEY: John, before we
15 begin I want to put a statement on
16 the record.

17 For the record, as counsel for
18 the witness individually, the other
19 counsel are aware that there was back
20 and forth with the bankruptcy
21 attorneys regarding the filing for
22 Chapter Eleven of the tenant in this
23 case, Flavorworks Trucks LLC, and it
24 was decided among that bankruptcy
25 counsel that the deposition today

1 R. DiSPIRITO

2 could go forward. However, the scope
3 of the examination was not discussed,
4 so I want to say Mr. Bradham on the
5 record that I'm not going to object
6 to any questions that I think are
7 racing an issue as to that or
8 certainly not going to direct him not
9 to answer, but I did want to point
10 out on the record that any questions
11 from you that veer into areas
12 prohibited by the automatic state,
13 the risk is on you and the
14 consequences would be on you and not
15 on me for not objecting, and that's
16 what I wanted to say.

17 MR. BRADHAM: I will briefly
18 address that before I begin. As I
19 said from the beginning,
20 Mr. DiSpirito is not in bankruptcy.
21 There's very clear Southern District
22 of New York law that says that we can
23 proceed even though an entity that he
24 is involved with is in bankruptcy and
25 I believe that case law was shared

1 R. DiSPIRITO

2 with one of Mr. DiSpirito's entities'
3 bankruptcy counsel.

4 Q. If we can go ahead and proceed
5 if there's nothing else, Mr. DiSpirito, my
6 name is John Bradham and I will be taking
7 your deposition this morning. We're all on
8 video here and we already have had one
9 technical problem so it's very important to
10 try to speak clearly so that we can all
11 hear you. If you don't hear my questions
12 or understand them just tell me that and I
13 will be happy to repeat it or explain it to
14 you. If I don't hear you I may ask you to
15 repeat what you said or have the court
16 reporter bring it back. If you need to
17 take a break at any time just let me know
18 and with that, let's go ahead and get
19 started.

20 Have you previously been
21 deposed in any other matters?

22 A. Yes.

23 Q. Can you tell me what matters
24 those were?

25 A. Yes, in a estate administration

1 R. DiSPIRITO

2 case about six years ago in the Surrogate's
3 Court.

4 Q. Sorry, what was the caption of
5 the case?

6 A. Sorry, I don't remember what
7 that caption would be.

8 Q. What did the case concern?

9 A. The administration of my
10 mother's estate.

11 Q. Okay, an estate case?

12 A. Yes.

13 Q. Is that the only case legal
14 proceeding in which you ever have been
15 deposed in?

16 A. In my entire life, is that what
17 you mean?

18 Q. Yes. Any time during your
19 existence.

20 A. I have by deposed before.

21 Q. You have or haven't?

22 A. I have.

23 Q. Can you tell me just any other
24 time you have been deposed.

25 A. Partnership issue I think in

1 R. DiSPIRITO

2 2002.

3 Q. Was it a case, a lawsuit?

4 A. A lawsuit.

5 Q. What was the name of the
6 lawsuit?

7 A. I don't remember.

8 Q. What was the nature of your
9 involvement in the lawsuit; were you a
10 party?

11 A. Yes.

12 Q. Were you a Plaintiff or a
13 Defendant?

14 A. Is it possible to be both? I
15 think I was both. I think there was a suit
16 and a countersuit.

17 Q. Sorry?

18 A. There was a suit and a
19 countersuit, so I don't know what that
20 technically makes me.

21 Q. Well, initially you have to be
22 either a Plaintiff or a Defendant. A
23 Plaintiff is the one who brings a lawsuit,
24 a Defendant is the one who gets sued.
25 Defendants can bring a counterclaim but you

1 R. DiSPIRITO

2 were a Plaintiff or a Defendant?

3 A. I think I was a Plaintiff
4 first.

5 Q. Where was the lawsuit filed?

6 A. In New York City.

7 Q. State or Federal Court?

8 A. I don't remember.

9 Q. Do you remember the name of the
10 other party?

11 A. Yes, it was Jeffery Chodorow.

12 Q. Jeffrey Chodorow?

13 A. Yes.

14 Q. Have you been deposed in any
15 other cases?

16 A. Not that I can recall, no.

17 Q. Other than the surrogate case
18 you mentioned, the estate case, and the
19 case brought with Jeffrey Chodorow, have
20 you been a party to any other lawsuits?

21 A. I don't think so, no.

22 Q. Have you testified in court in
23 any cases? That's different than a
24 deposition.

25 A. In the 2002 case there was a

1 R. DiSPIRITO

2 court hearing where I believe I gave
3 testimony. I'm not sure if hearing is the
4 same as testimony. But I was asked
5 questions in a public proceeding.

6 Q. In a courtroom?

7 A. Yes.

8 Q. Other than that, have you
9 testified in court before?

10 A. I don't think so.

11 Q. Have you ever been a party to
12 what is called an arbitration which is a
13 private litigation that occurs outside of
14 the courtroom?

15 A. I think the same case that I
16 referenced earlier ended with an
17 arbitration. I believe it did. No,
18 actually, I don't remember, but I remember
19 something about an arbitration.

20 Q. When you say the same case, are
21 you referring about the case with Chodorow?

22 A. Yes.

23 Q. So you can't remember if that
24 was an arbitration or a case filed in
25 court?

1 R. DiSPIRITO

2 A. It was a case filed in court,
3 but I just can't remember, but I believe it
4 was sent to arbitration.

5 Q. What do you currently do for a
6 living?

7 A. I'm a chef.

8 Q. Explain that a bit more. How
9 do you make money as a chef? Are you
10 working in a restaurant, do you own a
11 restaurant?

12 A. I work in restaurants, I own a
13 food delivery business, I write cookbooks,
14 I appear on television, I consult.

15 Q. Have you discussed this
16 deposition today with anyone other than
17 your attorney?

18 MR. BAILEY: Attorneys plural.

19 A. My attorneys, and I told my
20 wife I was attending this today.

21 Q. Sorry, can you repeat that?

22 A. My attorneys, and I told my
23 wife I was attending this today.

24 Q. So just your attorneys and your
25 wife, correct?

1 R. DiSPIRITO

2 A. Yes.

3 Q. Have you discussed this lawsuit
4 today with anyone other than your attorney
5 or your wife?

6 A. Not that I can recall.

7 Q. Have you discussed this lawsuit
8 with John Rigos?

9 A. Yes.

10 Q. What did you discuss with
11 Mr. Rigos?

12 A. We discussed general
13 information about the lawsuit, the
14 substance of the lawsuit.

15 Q. How many times have you
16 discussed the lawsuit with Mr. Rigos?

17 A. I can't remember but, you know,
18 more than five times.

19 Q. Do you recall beyond what you
20 told me the substance of any of those
21 discussions?

22 A. Yes, to some degree, I don't
23 know with what accuracy, but we discussed
24 issues like representation, how the
25 bankruptcy intersects with it, things like

1 R. DiSPIRITO

2 that.

3 Q. Do you recall anything else
4 about those discussions that you can tell
5 me?

6 A. No, not at the moment, no.

7 Q. Have you discussed this lawsuit
8 with Mr. Cuculich, who is a part of the
9 Plaintiff?

10 A. I don't think we have actually.

11 Q. So I want to show you the
12 subpoena pursuant to which we're here.
13 It's a Subpoena to Testify At Deposition in
14 a Civil Action Rocco DiSpirito.

15 MR. BRADHAM: Ed, do you have
16 that?

17 MR. BAILEY: Yes.

18 Q. Prior to today have you seen
19 this subpoena?

20 A. I believe so.

21 Q. When did you previously see it?

22 A. I don't remember when, but I
23 feel like I have seen it.

24 Q. You don't recall when? Do you
25 recall what month?

1 R. DiSPIRITO

2 A. No, I believe it was in the
3 last year, though, in 2022.

4 Q. How did you come to see it?

5 A. My recollection is that it was
6 in an E-mail from my attorneys at the time.

7 Q. When you say, "my attorneys",
8 what attorney are you referring to?

9 A. I should say my former attorney
10 Ackerman.

11 Q. When you say your former
12 attorneys, did they represent you
13 individually or did they represent one of
14 your entities?

15 A. I think both.

16 Q. They represented you both
17 individually and they also represented the
18 Flavorworks entity?

19 MR. BAILEY: Asked and
20 answered. You may answer.

21 A. Yes.

22 Q. So they E-mailed you the
23 subpoena?

24 A. Yes.

25 Q. Do you remember what month that

1 R. DiSPIRITO

2 was? Was it July?

3 A. I'm sorry, I don't remember.

4 Q. Did you make any response to it
5 once you had received it?

6 MR. BAILEY: I will caution the
7 witness not to reveal anything about
8 the contents or substance of any
9 discussions between you and your
10 prior attorneys. Do you understand
11 that, Mr. Witness?

12 THE WITNESS: Yes.

13 Q. So let's be clear. You have
14 had a lot of different attorneys for
15 different things. You're here testifying
16 in your individual capacity and if an
17 attorney was representing you when I asked
18 you these questions I don't want to know
19 what you discussed with your attorney, but
20 what I'm trying to get at is what you did
21 beyond that. So other than any discussions
22 you had with your attorney, I would like to
23 know what you did when you received the
24 subpoena?

25 A. I don't remember.

1 R. DiSPIRITO

2 Q. You didn't respond to it in any
3 way?

4 MR. BAILEY: Objection to form.
5 You may answer.

6 A. I honestly don't remember.

7 Q. Did you know at the time when
8 you received that that it required you to
9 appear for a deposition on July 28?

10 MR. BAILEY: Objection to form.
11 You may answer.

12 A. I don't -- I'm not sure what I
13 thought it meant. I honestly just took
14 advice from my attorneys and they were
15 handling it as far as I knew and that's all
16 I knew.

17 Q. And those attorneys would be
18 the Ackerman firm?

19 A. Yes.

20 MR. BRADHAM: Ed, if you can
21 hand him the second subpoena which is
22 the subpoena to Flavorworks Trucks
23 LLC, the subpoena duces tecum.

24 MR. BAILEY: Got it.

25 Q. Prior to today, Mr. DiSpirito,

1 R. DiSPIRITO

2 have you ever seen this subpoena before?

3 A. Is this different than the last
4 one?

5 Q. Yes. The last one was a
6 subpoena to you as an individual. This is
7 --

8 A. Okay. I don't remember seeing
9 this.

10 Q. You don't recall ever seeing it
11 before?

12 A. That's correct.

13 MR. BRADHAM: I would like to
14 mark the first subpoena which is the
15 Subpoena to Testify At a Deposition
16 in a Civil Action Rocco DiSpirito as
17 Exhibit 1. And then the second
18 subpoena which is Subpoena to Produce
19 Documents Directed to Flavorworks
20 Trucks LLC is Exhibit 2.

21 (Whereupon, the aforementioned
22 documents were deemed marked as
23 Plaintiff's Exhibits 1 and 2 for
24 identification as of this date by the
25 Reporter.)

1 R. DiSPIRITO

2 Q. So, Ed, could you show
3 Mr. DiSpirito the agreement of the lease?

4 MR. BAILEY: So it's annexed to
5 there.

6 THE WITNESS: Okay.

7 Q. So what we should be looking at
8 is the Agreement of Lease, and it's
9 actually marked as Exhibit 1 for the
10 deposition of Mr. Rigos.

11 A. Okay.

12 MR. BRADHAM: We will mark that
13 as Exhibit 3 for today.

14 (Whereupon, the aforementioned
15 document was marked as Plaintiff's
16 Exhibit 3 for identification as of
17 this date by the Reporter.)

18 Q. I would like to go to the last
19 page of it. This is your signature,
20 correct, under Flavorworks Trucks LLC?

21 A. Yes, that's my signature.

22 Q. And then John Rigos served as
23 the guarantor of this lease, correct?

24 A. That's what it says here, yes.

25 Q. Well, is that consistent with

1 R. DiSPIRITO

2 your recollection?

3 A. Yes.

4 Q. How do you know Mr. Rigos?

5 A. Through mutual friends.

6 Q. Sorry, say again?

7 A. Mutual friends.

8 Q. So you met Mr. Rigos through
9 mutual friends before he became the
10 guarantor of this lease?

11 A. Yes, that's correct.

12 Q. What was the nature of your
13 relationship with him; did you become
14 business partners, friends, if you could
15 explain that to me?

16 A. I would say it was a friendly
17 relationship, where some business was
18 discussed.

19 Q. The business that you
20 discussed, did it concern his involvement
21 in any of your businesses?

22 A. I would say it mostly concerned
23 new business ideas that we were discussing.

24 Q. How did Mr. Rigos come to be
25 the guarantor of this lease?

1 R. DiSPIRITO

2 MR. BAILEY: I will object to
3 form. You may answer if you
4 understand the question.

5 A. I asked him I think. I think I
6 asked him.

7 Q. So you asked him, you asked
8 Mr. Rigos to be the guarantor?

9 A. Yes.

10 Q. Why did you do that?

11 A. Because I needed a guarantor
12 and he was a person that I thought I could
13 ask.

14 Q. Why did you think you could ask
15 him?

16 A. I'm not sure why I thought
17 that. I asked him, after some discussion
18 he agreed.

19 Q. Do you recall that discussion?

20 A. Not really, no. I mean I
21 probably can recall some parts of it but I
22 doubt with any accuracy. It was a while
23 back now.

24 Q. And the discussion you referred
25 to, was it one discussion or multiple

1 R. DiSPIRITO

2 discussions?

3 A. I think it was multiple.

4 Q. And you can't recall anything
5 about these discussions, is that what you
6 are telling me?

7 A. Not with accuracy, no.

8 Q. Give me your best recollection
9 of these discussions.

10 A. Okay. I likely told him I was
11 looking at this lease and that the landlord
12 was requiring a guarantor and would he
13 consider being the guarantor. That's
14 probably what happened.

15 Q. Did he just agree right away or
16 was it a continued discussion?

17 A. I think he agreed pretty
18 quickly if I remember correctly. I think
19 he agreed. What's right away? In the same
20 conversation, maybe in one or two more
21 conversations.

22 Q. Did you ask anyone else to be
23 the guarantor prior to Mr. Rigos?

24 A. I may have.

25 Q. Do you recall?

1 R. DiSPIRITO

2 A. Not really, no.

3 Q. Why do you understand Mr. Rigos
4 agreed to guarantee the lease?

5 A. He's a nice guy. He's a nice
6 person. He wanted to be helpful.

7 Q. Did he explain to you why he
8 wanted to be helpful?

9 A. I don't think so. He's
10 generally a very helpful person.

11 Q. Has the nature of your
12 relationship with Mr. Rigos changed since
13 he signed the lease as guarantor?

14 A. Since signing the lease as
15 guarantor, I don't think it changed very
16 much.

17 Q. Can you repeat that?

18 A. Since signing the lease as
19 guarantor I don't believe it's changed very
20 much.

21 Q. Why didn't you guarantee the
22 lease?

23 A. I'm not sure. I can't remember
24 why.

25 Q. Do you recall telling Mr. Rigos

1 R. DiSPIRITO

2 that you couldn't because you were a
3 celebrity and you, therefore, couldn't
4 release your financial statements?

5 A. I mean it sounds familiar. I
6 don't know that -- I can't recall the
7 conversation but sounds like something I
8 might have said.

9 Q. Have you had any recent
10 discussions, meaning in the last year, with
11 Mr. Rigos about this guarantee?

12 A. Yes.

13 Q. Tell me about these
14 discussions; how many were there?

15 A. Five to ten discussions.

16 Q. Tell me everything you remember
17 about these discussions.

18 A. It's mostly to do with the
19 lawsuit.

20 Q. What did you discuss with him?

21 A. Matters about the lawsuit,
22 plans to work things out, he asked if I was
23 able to pay the arrears, sort of generally
24 what the plan is.

25 Q. So you said you discussed

1 R. DiSPIRITO

2 matters about the lawsuit. What matters
3 about the lawsuit did you discuss?

4 A. The fact that there is a
5 lawsuit, his involvement in the lawsuit,
6 whether or not I would be able to work
7 things out with the landlord, that sort of
8 thing.

9 Q. Did he express any opinion
10 about his involvement in the lawsuit?

11 A. He's generally unhappy about
12 it.

13 Q. Did you give him any assurances
14 about the lawsuit?

15 A. To the extent that I could
16 provide assurances, I may have, yes.

17 Q. Do you recall any of those?

18 A. Not specifically.

19 Q. You said you discussed plans to
20 work things out, what plans did you
21 discuss?

22 A. Generally the ability or
23 willingness to work things out with the
24 landlord.

25 Q. Did you tell him that you were

1 R. DiSPIRITO

2 going to do that?

3 A. I don't remember if I told him
4 that specifically, but I imagine I told him
5 I would try to work things out because I
6 generally try to work things out.

7 Q. Did you try to work things out
8 with the landlord?

9 A. After the lawsuit the firm at
10 Ackerman took over all the discussions with
11 the landlord and I left it to them to try
12 to work things out, but I definitely hoped
13 that they would work things out and
14 generally felt like we should try to work
15 things out.

16 Q. Did you do anything yourself
17 other than delegating to the lawyers to
18 work it out?

19 A. I may have reached out to the
20 landlord, I don't remember. I'm not sure
21 if it was before or after the lawsuit.

22 Q. The other thing you said you
23 discussed with Mr. Rigos was whether you
24 could pay the arrears, what did you discuss
25 about that?

1 R. DiSPIRITO

2 A. I don't remember the specifics
3 but I believe we discussed generally
4 whether or not I could pay the arrears
5 and/or whether or not Flavorworks Trucks
6 could pay the arrears and come to some
7 agreement with the landlord.

8 Q. Sorry, can you repeat the last
9 statement.

10 A. Come to some agreement with the
11 landlord.

12 Q. Did you tell Mr. Rigos that you
13 could pay the arrears?

14 A. I don't think I said that.

15 Q. Did you tell him you were going
16 to pay part of them or work things out with
17 the landlord? What did you tell him?

18 A. Generally I think I spoke about
19 that sort of effort, I don't remember
20 specifically what I told him. I think I
21 generally spoke about how to make things --
22 you know, get up to date to make things
23 okay with the landlord.

24 Q. What things did you tell him
25 you were going to do to make things okay

1 R. DiSPIRITO

2 with the landlord?

3 A. I don't remember specifically
4 but, you know, probably work out an
5 arrangement and pay some of the arrears and
6 in the hopes of a larger arrangement.

7 Q. Did you try to make some kind
8 of arrangement to work things out and pay
9 some of the arrears?

10 A. I asked my attorneys to. I
11 believe they did try to work things out,
12 yes.

13 Q. Other than delegating to your
14 attorneys, did you try to do anything?

15 A. At what time? At what point?

16 Q. At any point.

17 A. Yes, there were many times
18 where I spoke to the landlords to try to
19 work things out.

20 Q. So let's go through that. Tell
21 me about your discussion, and by the
22 discussions with the landlord you are
23 referring to Steven Cuculich, right?

24 A. Yes.

25 Q. Did you tell Mr. Rigos about

1 R. DiSPIRITO

2 these discussions with Mr. Cuculich?

3 A. I imagine I told him about
4 some, I don't remember which ones I told
5 him about.

6 Q. Tell me about any discussions
7 you had with Mr. Cuculich. How many times
8 did you talk to him to try to work things
9 out?

10 A. A dozen or more times.

11 Q. Tell me everything that you
12 remember about these communications.

13 A. I don't remember any specifics,
14 but I can say in general we talked about
15 making payments, catching up on payments,
16 that sort of thing.

17 Q. Did you tell him that you are
18 going to make payments and catch up on
19 payments?

20 A. Yes, at times I did, yes.

21 Q. Did you actually do that?

22 A. Not every time, no.

23 Q. Did you catch up on some
24 payments?

25 A. Over the course of the lease,

1 R. DiSPIRITO

2 yes, I at times caught up on payments, yes.

3 Q. When is the last time you did
4 that?

5 A. I don't remember, but
6 pre-pandemic probably.

7 Q. You said pre-pandemic?

8 A. Yes, I said pre-pandemic.

9 Q. Do you recall when the last
10 time you spoke to Mr. Cuculich was?

11 A. Yes, I think it was this past
12 summer.

13 Q. What do you recall about that
14 conversation?

15 A. Mr. Cuculich wanted to visit
16 the space with an insurance broker and he
17 came and he visited the space with an
18 insurance broker and we had a conversation
19 while he was there about this in general,
20 this lawsuit and arrears in general and I
21 don't remember if we specifically discussed
22 a plan or not, but we discussed things in
23 general, the lawsuit and the general
24 situation.

25 Q. Do you remember any specifics

1 R. DiSPIRITO

2 of that conversation?

3 A. I remember he was very focused
4 on getting insurance and he sort of went
5 through his legal strategy and what his
6 plans were for moving forward with lawsuits
7 and there were other things we discussed, I
8 just can't remember with any accuracy.

9 Q. Do you remember any specific
10 things Mr. Cuculich said to you in any of
11 your communications with him about the
12 lease and your arrears?

13 A. Yes, some specifics. He would
14 talk about arrears and we can do to catch
15 up, payment plans, his opinion about the
16 business not being retail came up a lot.
17 He would try to advise me on how to proceed
18 with business to improve the situation.
19 Mostly suggesting that we use the space for
20 retail purposes, that was one big note I
21 remember fairly well.

22 Q. Sorry, he suggested that you
23 use the space for retail purposes?

24 A. Yes.

25 Q. What exactly did tell you about

1 R. DiSPIRITO

2 that?

3 A. I remember he said that the
4 model didn't work and that it's a retail
5 space, should be used for retail and just
6 his general discontent with the fact that
7 it wasn't being used for retail.

8 Q. And you never used the space
9 for retail, did you?

10 A. Not for the kind of retail he
11 was discussing. He meant, you know, open
12 the doors to the people on the street
13 retail. We used it for direct consumer
14 retail, which is slightly different.

15 Q. But you never had consumers
16 actually coming to the space, correct?

17 A. Correct. That's correct.

18 Q. Do you remember anything else
19 that Mr. Cuculich told you during these
20 discussions?

21 A. He mentioned he had two lawyers
22 in his family. He mentioned that he tried
23 to help his tenants as an advisor
24 frequently. He would occasionally ask for
25 my product that I made, some shake powder

1 R. DiSPIRITO

2 that I made. I would send them it to him.

3 Q. Anything else you remember him
4 telling you?

5 A. I would just be guessing at
6 this point.

7 Q. At the time Mr. Rigos
8 guaranteed the lease were you and he
9 discussing other business ventures?

10 A. We were generally discussing
11 ventures. Well, this was a venture we were
12 discussing. This venture that took place
13 in this space is a venture that we were
14 discussing.

15 Q. So when you say you were
16 discussing it, were you discussing the
17 prospect of him being involved in the
18 business?

19 A. Yes.

20 Q. So just to be clear, you were
21 discussing the possibility of him being
22 involved in Flavorworks Trucks, the tenant?

23 A. Well, we called it -- there is
24 a different name for it and it was a very
25 specific segment of the overall businesses

1 R. DiSPIRITO

2 I was involved in. I don't remember if it
3 was Flavorworks Trucks at the time or not.
4 That was a new entity that was set up for
5 this space. So it might have been called
6 something else but it was generally the
7 business of creating healthy meals and --
8 creating healthy custom meals and
9 delivering them to people at home.

10 Q. And that's the business you
11 were operating at the premises that are the
12 subject of this lease that's Exhibit 3,
13 correct?

14 A. It was a newer iteration of the
15 business we were discussing, so it wasn't
16 the exact same business, but yes, a version
17 of that business was what I ended up
18 executing from this space.

19 Q. And you understand when we talk
20 about the lease here that the space we're
21 talking about 45-13 Broadway, Astoria,
22 New York, right?

23 A. Yes, that's correct.

24 Q. So at the time Mr. Rigos
25 guaranteed the lease, you and he were

1 R. DiSPIRITO

2 discussing he be involved with you in
3 business, in a business that was some
4 variation of the business you were
5 discussing at these premises?

6 A. I believe the discussions came
7 before there were premises. So just for
8 chronological order sake we were discussing
9 a business that involved delivering healthy
10 meals to people and then these premises
11 came after.

12 Q. So you had discussions with
13 Mr. Rigos about him being involved in
14 business for you and the business of
15 delivering healthy meals to people,
16 correct?

17 A. Yes.

18 Q. And that was prior to the time
19 that this lease came up, right?

20 A. Yes.

21 Q. And then at this lease you
22 actually -- the business that was conducted
23 there was preparing healthy meals to
24 deliver to people, correct?

25 A. Yes.

1 R. DiSPIRITO

2 Q. So at the time he guaranteed
3 the lease there were discussions about him
4 being involved in that business?

5 A. More or less. I don't remember
6 the exact order of things, but at some
7 point he was no longer a part of those
8 discussions and I can't remember what
9 happened and in what order, but it may have
10 been the case that he was no longer a part
11 of the discussions about being a part of
12 the business but was willing to guarantee
13 the lease.

14 Q. So, let's be clear, you know
15 you had discussions with Mr. Rigos about
16 him being involved in business with you and
17 the same thing of business you operated at
18 the premises, correct?

19 A. Yes.

20 Q. And you just don't recall the
21 exact timing of those discussions?

22 A. Right. Which came first or
23 which came after, I don't recall right now.

24 Q. But you believe those
25 discussions came prior to the time you

1 R. DiSPIRITO

2 actually entered into the lease, right?

3 A. Yes.

4 Q. You just don't remember when
5 they ended?

6 A. That's correct.

7 Q. Why did those discussions end?

8 A. A lot of reasons. I think it
9 was one of those situations where people
10 talk about working together and then it
11 just doesn't materialize.

12 Q. So ultimately did he ever
13 present a reason why he didn't want to
14 invest work with you?

15 A. I don't think so.

16 Q. So ultimately you and Mr. Rigos
17 never went into business together?

18 A. That's right.

19 Q. So turning to the premises in
20 the business that operated there,
21 Flavorworks Trucks LLC doing business as
22 A Delicious Life by Rocco DiSpirito, was
23 that one of the businesses that you
24 discussed Mr. Rigos being involved in?

25 A. Yes.

1 R. DiSPIRITO

2 Q. I'm just going to call it
3 Flavorworks Trucks for shorthand, do you
4 understand that I'm referring to the tenant
5 of this lease?

6 A. Yes.

7 Q. So you and Mr. Rigos discussed
8 his being involved in Flavorworks Trucks
9 but ultimately that did not occur?

10 A. Yes.

11 Q. What does Flavorworks Trucks
12 do?

13 A. Flavorworks Trucks is the
14 business that provides healthy meal service
15 delivery to people who live in New York
16 City and beyond.

17 Q. And the meals were being
18 prepared at the premises 45-13 Broadway in
19 Astoria?

20 A. Yes.

21 Q. And then they were delivered to
22 clients that wanted them?

23 A. Yes.

24 Q. And you never operated a
25 restaurant at the premises 45-13 Broadway

1 R. DiSPIRITO

2 in Astoria, correct?

3 A. That's correct, no restaurants.

4 Q. So it was purely a meal
5 delivery business?

6 A. Yes.

7 Q. Did you ever have any
8 government permits for your operations at
9 the premises, 45-13 Broadway?

10 A. Which government permits?

11 Q. Well, did you have any
12 government permits?

13 A. I don't think so.

14 Q. Is Flavorworks Trucks still
15 operating at the premises?

16 A. Yes.

17 Q. And so it's still preparing
18 meals and delivering them to customers?

19 A. Yes.

20 Q. Did it ever suspend or cease
21 operations at the premises?

22 A. Yes. There were times where we
23 needed to suspend operations mostly due to
24 Covid.

25 Q. You said, "mostly due to

1 R. DiSPIRITO

2 Covid", were there other reasons you
3 suspended operations at the premises?

4 A. There were times where we had a
5 significant leak in the roof where we
6 couldn't operate for a few days. There
7 were times where my clients would go on
8 vacation, there would be a few weeks where
9 we weren't required to deliver meals and
10 that's basically it.

11 Q. You mentioned you ceased
12 operations during the pandemic, is that
13 correct?

14 A. Yes.

15 Q. For how long did you cease
16 operations?

17 A. Months at a time.

18 Q. Sorry?

19 A. Months at a time.

20 Q. Sorry, did you say four months?

21 A. For months at a time, I don't
22 remember how many. Months at a time. Not
23 F-O-U-R, F-O-R.

24 Q. So for months but you don't
25 recall how many months?

1 R. DiSPIRITO

2 A. Correct.

3 Q. And that was during the
4 pandemic?

5 A. Yes.

6 Q. Why would you cease operations
7 during the pandemic?

8 A. Well, there were times where we
9 couldn't operate because of the conditions
10 during the pandemic. There were times
11 where clients did not want deliveries
12 during the pandemic. Times where it was
13 just too difficult to get food deliveries,
14 employees, that sort of thing.

15 Q. The months that you mentioned,
16 do you recall what months those were?

17 A. I don't recall exactly, but,
18 you know, likely to be March, April, May,
19 June, July, that sort of thing, of 2020.

20 Q. One reason you suspended
21 operations during the pandemic was because
22 clients did not want the deliveries?

23 A. Yes, they were, you know,
24 either out of town or, I mean, I didn't
25 ask, but understanding everything shut down

1 R. DiSPIRITO

2 they sort of said we're done for a while.
3 I didn't know if they were coming back at
4 the time. Most of them have, but it was
5 just obvious that everything was shutting
6 down, so, you know.

7 Q. Around the time of the pandemic
8 roughly how many customers did you have?

9 A. Ten to fifteen.

10 Q. Is that the most customers you
11 have had since you operated this business?

12 A. No, in the beginning we had
13 more. Closer to when we first started
14 there we had in the 20 to 30 range at
15 times.

16 Q. But by the time the pandemic
17 came it was down to around ten or fifteen?

18 A. Yes.

19 Q. Did you ever cease operations
20 because of any kind of government mandate?

21 A. Yes, I mean some of the ceasing
22 of operations I referred to previously also
23 was in response to the mandate.

24 Q. What mandate?

25 A. I'm not going to remember

1 R. DiSPIRITO

2 specific laws but I think there was a
3 general mandate to cease everything for
4 several weeks if not months in 2020.

5 Q. When you say, "we all agreed",
6 who is we?

7 A. Just the world. New York City.
8 The world.

9 Q. But you weren't operating a
10 restaurant there, correct?

11 A. No.

12 Q. So are you telling me that
13 there was some government regulation that
14 required a food delivery company to cease
15 operations during the pandemic?

16 A. Yes, it was unclear who could
17 remain open and who could not remain open
18 and we were not clear about it.

19 Q. As you sit here today are you
20 telling me there was a government mandate
21 that food delivery companies cease
22 business?

23 A. I can't say that. I don't
24 remember the laws. It was a very confusing
25 time. I'm not going to pretend to be an

1 R. DiSPIRITO

2 expert on what the laws were or the
3 mandates were and were not.

4 Q. You mentioned a leak, that you
5 had to cease operations because of a leak.
6 Is that correct? Is that what you
7 testified to?

8 A. Yes, there was a few times when
9 the roof leaked in such a manner that we
10 were not able to operate until we replaced
11 it.

12 Q. What kinds of leaks were they?

13 A. Outside rain water coming in.

14 Q. Through the roof?

15 A. Yes, through the roof.

16 Q. How many days did you cease
17 operations because of the roof leak?

18 A. I don't remember.

19 Q. Do you remember when that was?

20 A. It was several times over the
21 course of the lease and I don't remember
22 when.

23 Q. And you don't remember how many
24 days it caused you to cease operation?

25 A. You know, less than ten.

1 R. DiSPIRITO

2 Q. Less than ten. When you had
3 the leaks did you speak to the landlord?

4 A. I mentioned in casual
5 conversation with the landlord I mentioned
6 the leaks.

7 Q. What did the landlord tell you?

8 A. I don't remember.

9 Q. How did the leaks become
10 resolved?

11 A. I hired several companies to
12 fix them several times.

13 Q. Do you recall what companies
14 those were?

15 A. By name, no, I don't recall the
16 names.

17 Q. You don't recall the names, was
18 it the same company or different companies?

19 A. No, typically a different
20 company.

21 Q. Do you recall how much that
22 cost?

23 A. Not with any accuracy. In the
24 several thousand I think. I don't
25 remember.

1 R. DiSPIRITO

2 Q. I believe you testified as a
3 result of these leaks you ceased operation
4 for less than ten days?

5 A. I think that's correct, yes.

6 Q. What is your position with
7 Flavorworks Trucks?

8 A. I'm a manager, I guess.

9 Q. You're the manager of it, of
10 the LLC?

11 A. The manager, yes.

12 Q. Are there other members in the
13 LLC?

14 A. No.

15 Q. Any officers?

16 A. No.

17 Q. At the business you were
18 operating at the premises, were there any
19 employees?

20 A. Yes.

21 Q. Who were they?

22 A. Various people that I would
23 hire from the employee market.

24 Q. Well, how many different
25 employees did you have?

1 R. DiSPIRITO

2 A. Over the course of since 2015?

3 Q. Yes, since you operated the
4 business.

5 A. I don't remember. More than
6 twenty.

7 Q. How many are there now?

8 A. One.

9 Q. What is the largest number of
10 employees that were working there at one
11 time?

12 A. Around twenty.

13 Q. When was that?

14 A. Closer to the beginning of the
15 lease, 2015, 2016, 2017.

16 Q. Did you lose employees during
17 the pandemic?

18 A. Yes.

19 Q. How many employees did you have
20 working right prior to the start of the
21 pandemic?

22 A. I believe it was four.

23 Q. Prior to the pandemic you had
24 four employees?

25 A. Yes.

1 R. DiSPIRITO

2 Q. Did any of these employees have
3 any kind of relationship with Mr. Rigos?

4 A. Not that I'm aware of.

5 Q. How about Mr. Cuculich?

6 A. Did Mr. Cuculich have a
7 relationship with Mr. Rigos?

8 Q. No.

9 A. Oh, relationship -- not that
10 I'm aware.

11 Q. Let me clarify. Did any of
12 your employees have any kind of
13 relationship with Mr. Cuculich?

14 A. Not that I'm aware of.

15 Q. So you're not aware of any
16 communications between any of your
17 employees and Mr. Rigos?

18 A. No.

19 Q. Or Mr. Cuculich?

20 A. No.

21 Q. Why were you down to four
22 employees at the time the pandemic began?

23 A. It was just -- it's what
24 business dictated.

25 Q. Does Flavorworks Trucks have

1 R. DiSPIRITO

2 accountants?

3 A. Yes.

4 Q. Who are they?

5 A. Independent contractors that --

6 Q. Do you recall their names?

7 A. No.

8 Q. Does Flavorworks Trucks keep
9 business records?

10 A. Yes.

11 Q. Where are those kept?

12 A. In the premises mostly.

13 Q. Did you ever show your business
14 records to Mr. Rigos?

15 A. No, I don't recall doing that,
16 no.

17 Q. During the times you were
18 operating the business did you have
19 discussions with Mr. Rigos about how you
20 were operating it?

21 A. Yes, we discussed it earlier
22 that he would offer advice frequently.

23 Q. Are you talking about
24 Mr. Rigos?

25 A. Mr. Rigos, sorry, I thought you

1 R. DiSPIRITO

2 said Mr. Cuculich. Not really with
3 Mr. Rigos, not a lot of conversation, no.

4 Q. Has Mr. Rigos ever been to the
5 premises?

6 A. Yes.

7 Q. How many times?

8 A. Around six, perhaps. Not a
9 hundred percent accurate. I think about
10 six.

11 Q. Do you recall last time he was
12 at the premises?

13 A. I don't recall, no.

14 Q. During these visits he had to
15 the premises what did you discuss?

16 A. I can't recall. Generally we
17 discussed what's going on in our lives, an
18 innovation that I'm working on, how things
19 are going with him and his business life,
20 personal life.

21 Q. Did you have discussions about
22 him investing or being involved in the
23 business?

24 A. Other than the original
25 discussion?

1 R. DiSPIRITO

2 Q. Sorry?

3 A. Other than the original
4 discussion? The answer is yes, but we
5 already discussed it.

6 Q. So nothing in addition to what
7 you already testified to?

8 A. I don't think so.

9 MR. BRADHAM: Ed, if you can
10 show Mr. DiSpirito the Declaration of
11 Mr. John Rigos.

12 Q. Mr. DiSpirito, do you have a
13 document called the Declaration of John Z.
14 Rigos in front of you?

15 A. Yes.

16 MR. BAILEY: I am going to mark
17 this Declaration of John Z. Rigos as
18 Exhibit 4 for today.

19 (Whereupon, the aforementioned
20 document was deemed marked as
21 Plaintiff's Exhibit 4 for
22 identification as of this date by the
23 Reporter.)

24 Q. Mr. DiSpirito, have you ever
25 seen this document before?

1 R. DiSPIRITO

2 A. I don't remember seeing this,
3 no.

4 Q. Do you recall ever seeing a
5 draft of it before?

6 A. No.

7 Q. Do you recall ever discussing
8 it or a draft of it with anyone?

9 A. I don't.

10 Q. I want to point you to
11 paragraph 3. I will read that for the
12 record. It says, "Flavorworks operates a
13 drinking and eating establishment at the
14 premises. In or about March 2020
15 Flavorworks ceased it's on-premises food
16 and beverage service to comply with the
17 emergency executive orders issued by former
18 Governor Cuomo".

19 In the first sentence it states
20 that Flavorworks operates a drinking and
21 eating establishment at the premises. Is
22 that an accurate statement?

23 A. People use a lot of terms to
24 discuss food businesses. I don't know what
25 constitutes an eating and drinking

1 R. DiSPIRITO

2 establish. But if he means restaurant I
3 guess it's not accurate. I think he meant
4 generally a food business.

5 Q. Well, let's be clear, there's
6 no -- I mean you know what a restaurant is,
7 right?

8 A. I think I do. I'm not sure
9 these days to be honest with you. I'm
10 struggling with that at this point.

11 Q. There was no restaurant at the
12 premises as you understand it, right?

13 A. I don't think there was a
14 restaurant there, that's right.

15 Q. When you say you don't think
16 was, you know there wasn't a restaurant
17 there, correct?

18 A. Yes. I know there wasn't a
19 restaurant there, yes.

20 Q. There was no drinking and
21 eating establishment at the premises,
22 correct?

23 MR. BAILEY: Objection to form.

24 A. If you mean restaurant, again,
25 there was no restaurant at the premises.

1 R. DiSPIRITO

2 Q. I'm asking you specifically.

3 A. I don't know what an eating and
4 drinking establishment is. I don't know
5 what the legal definition of that is so I
6 would rather not comment on that. There
7 was no restaurant there.

8 Q. What do you understand a
9 drinking and eating establishment to be?

10 A. I honestly don't know what that
11 means.

12 Q. How many years have you been a
13 chef?

14 MR. BAILEY: Objection to form.
15 Let's be nice, John.

16 A. The definition of what a
17 restaurant is or isn't are so --

18 MR. BAILEY: You've said
19 enough.

20 Argumentative, John. Directing
21 him not to answer.

22 MR. BRADHAM: Sorry, I asked
23 the witness how many years he has
24 been a chef and you are directing him
25 not to answer?

1 R. DiSPIRITO

2 MR. BAILEY: It's insulting.

3 I'm directing him not to answer.

4 You're not going to insult my witness
5 with me sitting here.

6 MR. BRADHAM: I'm not insulting
7 your witness. Asking your witness
8 how many years he's been a chef is a
9 perfectly legitimate question.

10 MR. BAILEY: That wasn't the
11 question. That question you can ask.

12 Q. How many years have you been a
13 chef, Mr. DiSpirito?

14 A. About thirty years.

15 Q. During that time you have
16 worked in many restaurants, correct?

17 A. Yes.

18 Q. And you are telling me today
19 you don't know what a drinking and eating
20 establishment is?

21 MR. BAILEY: Same objection.

22 You may answer.

23 A. I don't know what the legal
24 definition of that is. So I would rather
25 not comment on it.

1 R. DiSPIRITO

2 Q. I'm not asking you a legal
3 definition. I'm asking you what your
4 understanding of what a drinking and eating
5 establishment is.

6 MR. BAILEY: Same objection.

7 Q. Are you going to answer the
8 question?

9 MR. BAILEY: You may answer.

10 A. I don't have an understanding
11 of those terms. It would be -- I would be
12 guessing. I'm sure there's a legal
13 definition, I just don't know it.

14 Q. So I want to be clear, you have
15 been a chef for thirty years but you don't
16 an understanding of what a drinking and
17 eating establishment is?

18 A. No, I think the term, "drinking
19 and eating establishment", is an amorphous
20 and has many meanings and definitions and
21 is interpreted by many people to mean many
22 different things. I think the word
23 "restaurant" has a more clear meaning and
24 if your question is was there a restaurant
25 there the answer is no. But the drinking

1 R. DiSPIRITO

2 and eating establishment, I'm not sure of
3 what that meaning is.

4 Q. Were any members of the general
5 public eating or drinking at the premises?

6 A. No.

7 Q. Did you have an on-premises
8 food and beverage service at the premises?

9 A. No.

10 Q. Do you know what emergency
11 executive orders issued by former Governor
12 Andrew Cuomo that Mr. Rigos referred to?

13 A. I generally remember that there
14 were a number of emergency orders issued,
15 so I guess yes. I think I know which ones
16 he is referring to. I don't have a hundred
17 percent certainty about it. I can't -- I
18 don't know what he meant by that.

19 Q. You are saying you don't know
20 what he meant by that?

21 A. I don't know which emergency
22 executive order he is referring to because
23 it's not specific, but I know there were
24 many issued.

25 Q. Did you see operations at the

1 R. DiSPIRITO

2 premises because of an emergency executive
3 order issued by Governor Andrew Cuomo?

4 A. I believe I did, yes.

5 Q. When you say you believe you
6 did, what is the basis of your belief?

7 A. The basis is there were many
8 executive orders issued. It was incredibly
9 confusing to know where you stood in the
10 definitions that were sort of laid out and
11 we couldn't operate at the same time. So
12 I'm not sure if it's directly a result of a
13 legal order issued or just people not
14 wanting to work and customers not wanting
15 to consume. But during the time where many
16 executive orders were issued we had to
17 cease operations.

18 Q. When you say you had to cease
19 operations, did you have to cease
20 operations because of an executive order?

21 MR. BAILEY: Asked and
22 answered. You may answer.

23 A. I'm still confused about the
24 executive orders to this day that I don't
25 think I can answer you with accuracy. It's

1 R. DiSPIRITO

2 my general belief that these orders
3 affected me and I responded to them in the
4 most earnest way possible. I'm sure if we
5 look back now we can say, well, he could
6 have been open here or maybe need to close
7 there. The point is that the pandemic
8 adversely affected my business in a
9 substantial way and I think that's the
10 point Mr. Rigos is trying to make.

11 Q. Well, he actually says you were
12 complying with the emergency executive
13 orders. Do you believe you were complying
14 -- you had to comply with any emergency
15 executive orders?

16 A. I did believe at the time, yes,
17 I did believe at the time there were
18 emergency executive orders that I needed to
19 comply with.

20 Q. You believe there were
21 emergency executive orders that required
22 you to cease operations?

23 MR. BAILEY: Asked and
24 answered.

25 A. I did, yes.

1 R. DiSPIRITO

2 Q. Today do you believe that?

3 A. I'm not sure. I would have to
4 discuss it with my attorneys and go back
5 and review everything. I'm still confused
6 about everything that happened. I can
7 barely remember what happened. All I
8 remember is we were in a state of panic for
9 many months and struggling, struggling,
10 struggling.

11 Q. Did you seek legal guidance on
12 wherever you had to cease operations
13 because of any emergency executive orders?

14 A. I believe I did.

15 Q. Do you recall what attorneys
16 you believe you sought advice from?

17 A. I believe I used the New York
18 Hospitality organization that I'm a member
19 of. They have a forum on line that we used
20 a lot of the time. I believe I went by
21 that.

22 Q. These weren't attorneys that
23 you hired?

24 A. No.

25 Q. So you believe you got some

1 R. DiSPIRITO

2 guidance from a forum?

3 A. From an organization that
4 represents restaurants in New York City.

5 Q. What's the name of that
6 organization?

7 A. The New York Hospitality
8 Alliance.

9 Q. When you say you got guidance
10 from them, how did you get that guidance?

11 A. They would publish guidance on
12 an almost daily basis, send out E-mails
13 with update to the rules on an almost daily
14 basis, and I would ride those and determine
15 courses of action based on that.

16 Q. So that you believe these were
17 E-mails that you received from them?

18 A. Yes.

19 Q. These were generally E-mails
20 they blasted out to members?

21 A. I don't know what you mean by
22 general, but they were specific to the
23 pandemic and all the new laws that were
24 being enacted.

25 Q. So these E-mails would have

1 R. DiSPIRITO

2 gone out to numerous people other than
3 yourself?

4 A. Yes.

5 Q. Do you recall specifically what
6 E-mails you are referring to?

7 A. Not specifically, no.

8 Q. Did you ever discuss these
9 E-mails with Mr. Rigos?

10 A. I don't remember.

11 Q. Would you ever have forwarded
12 any of these E-mails to Mr. Rigos?

13 A. It's possible we discussed some
14 of the new rules and regulations during the
15 pandemic, I just can't remember.

16 Q. Did you ever discuss with
17 Mr. Rigos why you ceased operations at any
18 point?

19 A. I think those discussions
20 happen through our attorneys and I don't
21 remember the other -- if there were other
22 discussions.

23 Q. Sorry, you don't recall if you
24 and Mr. Rigos had discussions about ceasing
25 operations?

1 R. DiSPIRITO

2 A. No, I don't recall.

3 Q. Let's go back to Exhibit 3,
4 which is the lease.

5 MR. BAILEY: The witness is
6 asking me for a break. Did you have
7 a question, John?

8 MR. BRADHAM: I'm sorry, you
9 would like to take a break?

10 THE WITNESS: Yes, please.

11 MR. BRADHAM: Okay, let's take
12 a five-minute break.

13 (Whereupon, a short recess was
14 taken.)

15 Q. Mr. DiSpirito, just following
16 up on what we just discussed, you never had
17 a permit to operate a restaurant at the
18 premises, correct?

19 A. No.

20 Q. You never had a permit for any
21 on premises food or beverage service,
22 correct?

23 A. No.

24 Q. I think you said Mr. Rigos
25 visited the premises approximately six

1 R. DiSPIRITO

2 times?

3 A. Yes.

4 Q. I want to go back to what you
5 marked as Exhibit 3, which is the agreement
6 of the lease if you could just put that in
7 front of you.

8 A. Okay.

9 Q. If you look just on the first
10 page in that first paragraph, it refers to
11 a business address of 511 Avenue of the
12 Americas, number 367, what is that?

13 A. That's an office that I use.

14 Q. Sorry?

15 A. That's my office address.

16 Q. So that's an office you use for
17 the business?

18 A. Yes.

19 Q. You use it for other businesses
20 too?

21 A. Yes, I guess so, yes.

22 Q. Would Mr. Rigos have ever come
23 to those offices?

24 A. No, I don't think so.

25 Q. Do you recall when the last

1 R. DiSPIRITO

2 time Flavorworks Trucks paid rent under the
3 lease?

4 A. I don't recall.

5 Q. Do you know what the amount of
6 overdue rent currently is?

7 A. I don't have the exact number.

8 Q. Do you have an approximate
9 number?

10 A. I'm happy to look it up. I
11 would rather not guess about the
12 approximate number. Do you know it? Do
13 you have the number?

14 Q. You don't know to look it up.
15 I'm asking you as you sit here today do you
16 know?

17 A. The exact number, no.

18 Q. Do you have an approximate
19 number?

20 A. Not really, no.

21 Q. Who would know this?

22 A. Attorneys, I guess, probably
23 have it in their records.

24 Q. Are there any business people
25 other than attorneys who would know?

1 R. DiSPIRITO

2 A. An accountant.

3 Q. Do you recall the name of the
4 accountant?

5 A. Yes, Donna Shore.

6 Q. Is she with a firm or on her
7 own?

8 A. It's a firm.

9 Q. Do you recall the name of the
10 firm?

11 A. It's her name, sorry, I guess
12 -- I don't know how big the firm is. It's
13 called Donna Shore. Donna shore is the
14 name of both.

15 Q. So the name of her name, the
16 individual, is Donna Shore, and the name of
17 the firm is Donna Shore?

18 A. Yes.

19 Q. Where is she based?

20 A. Brooklyn, New York.

21 Q. Did you ever discuss with
22 Mr. Rigos the amount of overdue rent?

23 A. I'm sure I did. I can't
24 remember but I'm sure I did.

25 Q. You don't recall the specifics

1 R. DiSPIRITO

2 of those communications?

3 A. I'm sorry, I don't.

4 Q. How long has Donna Shore been
5 your accountant?

6 A. A couple of months.

7 Q. Sorry?

8 A. A couple of months.

9 Q. Was there an accountant prior
10 to Donna Shore?

11 A. There were one or two, yes.

12 Q. Do you recall their names?

13 A. I don't.

14 Q. I want to go to page four of
15 the lease, Article 6, Insurance. Did
16 Flavorworks Trucks ever obtain insurance
17 for the premises?

18 A. Yes.

19 Q. When did it obtain the
20 insurance?

21 A. Around the same time as the
22 signing of the lease.

23 Q. Was it your understanding that
24 you complied with this Article 6 when you
25 got that insurance?

1 R. DiSPIRITO

2 A. Yes, without reading the whole
3 article I understood that the insurance I
4 got was appropriate for my commitment in
5 this article.

6 Q. You mentioned earlier that you
7 had discussions with Mr. Cuculich about the
8 insurance. Is that right?

9 A. Yes.

10 Q. Did Mr. Cuculich agree that you
11 had the right insurance?

12 A. No, at that time he did not
13 agree that I had the right insurance.

14 Q. Do you recall what the
15 discussions were about that?

16 A. Yes, he wanted to bring in an
17 insurance broker to get new insurance,
18 which he did, and the discussions were
19 about whether or not there was appropriate
20 insurance at the time. This was I believe
21 six months ago.

22 Q. Did he agree that there was
23 appropriate insurance as required by the
24 lease?

25 A. He did not.

1 R. DiSPIRITO

2 Q. Did he get additional
3 insurance?

4 A. I don't know. I believe he
5 did.

6 Q. Sorry?

7 A. I believe he did.

8 Q. Who did you get your insurance
9 from?

10 A. A broker I used for many years.

11 Q. Who was that?

12 A. I can't remember his names.
13 But it's someone I used for many years.

14 Q. Is he based in Manhattan?

15 A. He's based in New Jersey.

16 Q. Did you ever discuss the
17 insurance issue with Mr. Rigos?

18 A. I don't believe I have, no.

19 Q. Did you ever send the insurance
20 information you got to Mr. Cuculich?

21 A. I don't think so. I don't
22 remember but I don't think so.

23 Q. Did he ask you what insurance
24 you had?

25 A. He did recently, yes.

1 R. DiSPIRITO

2 Q. What did you tell him?

3 A. I told him I had a policy
4 started and I showed him the certificate of
5 -- COI, and that's all I remember.

6 Q. Do you remember when that
7 insurance started?

8 A. No.

9 Q. Going to page eight, Article 9,
10 Electricity, Gas, Water, Et Cetera, did
11 favor Flavorworks pay for utilities as
12 required by Article 9 of this lease?

13 A. Not as required. In other
14 words, we fell behind.

15 Q. Do you know how far behind?

16 A. In terms of months or amounts?

17 Q. Do you have any estimate of the
18 amount?

19 A. About \$50,000.

20 Q. Can you repeat that?

21 A. About \$50,000.

22 Q. Did you say fifty?

23 A. Yes.

24 Q. Is that the current amount of
25 arrears?

1 R. DiSPIRITO

2 A. I don't know if it's the
3 current amount.

4 Q. Is that with the gas company or
5 electricity or what?

6 A. That's electricity.

7 Q. Any other utility arrears?

8 A. Yes, water. The water bill.

9 Q. How far behind is that?

10 A. I think it's a few thousand
11 dollars. I think it's like five or six
12 thousand.

13 Q. Any other utilities you are in
14 arrears on?

15 A. No.

16 Q. Did you ever discuss the
17 arrears on these utilities with Mr. Rigos?

18 A. I don't believe so.

19 Q. Did you ever discuss this
20 Article 9 with Mr. Rigos?

21 A. I don't remember discussing it
22 with him, no.

23 Q. Sorry, you don't recall
24 discussing it with him?

25 A. I may have, I just don't

1 R. DiSPIRITO

2 recall.

3 MR. BRADHAM: I want to go next
4 to what I'm going to mark as Exhibit
5 5 and it's a series of E-mails and at
6 the front it says, "exhibit
7 Plaintiff's 3". I'm going to mark as
8 Exhibit 5 a document, the first page
9 says, "exhibit Plaintiff's 3" and it
10 has a Bates stamp number Rigos 204
11 and it continues until Rigos 211.

12 (Whereupon, the aforementioned
13 document was marked as Plaintiff's
14 Exhibit 5 for identification as of
15 this date by the Reporter.)

16 Q. Just looking at the first page
17 here, Mr. DiSpirito, it's a November 13,
18 2014 E-mail from you to John Rigos and it
19 says -- sorry, it's from John Rigos to you
20 and others and it says, "Rocco/William, the
21 guarantee and the indemnification look
22 good, please send me the versions for which
23 you would like my signature and I will turn
24 them right around". Do you recall seeing
25 this E-mail?

1 R. DiSPIRITO

2 A. I generally recall it, yes. I
3 mean the recall, the period and the fact
4 these E-mails went around. The exact
5 moment I saw this I don't recall. But I
6 believe I am familiar with this.

7 Q. He refers to the guarantee and
8 the indemnification look good, is it your
9 understanding that the guarantee he is
10 referring to is the guarantee in the lease
11 we already discussed?

12 A. Is it my understanding that the
13 guarantee referred to in this E-mail is the
14 same as the guarantee in the lease?

15 Q. Yes.

16 A. I think so, yes.

17 Q. He then refers to an
18 indemnification, do you know what he is
19 referring to?

20 A. Yes, I do.

21 Q. Can you tell me what that is?

22 A. It's an indemnification I
23 provided to him for any costs associated
24 with the guarantee, to the best of my
25 recollection.

1 R. DiSPIRITO

2 Q. Did Mr. Rigos request that you
3 would indemnify him in consideration of the
4 guarantee?

5 A. I don't remember how it
6 transpired, but the indemnification came up
7 during this process, I don't remember if it
8 is lawyer to lawyer or Mr. Rigos to me, but
9 it became part of the discussion and I
10 agreed to it.

11 Q. Do you recall discussing the
12 indemnification with Mr. Rigos?

13 A. Generally recall some
14 discussion, I don't have specifics in my
15 mind, but I generally recall, yes.

16 Q. Is it your understanding that
17 Mr. Rigos was requesting an indemnification
18 in order for him to sign the guarantee?

19 A. Yes, I think so. I'm not sure
20 the order in which things transpired, but I
21 think it came before the guarantee.

22 Q. Let's go to the second to last
23 page of those documents, so it would be
24 Rigos 210 and Rigos 211.

25 A. Yes, here it is in the E-mail.

1 R. DiSPIRITO

2 Q. What is your understanding of
3 this Rigos 210 to 211; is this a draft of
4 the indemnity?

5 A. Is this part of the lease? I
6 can't see who it is from. I'm not sure.
7 It looks like language regarding an
8 indemnification as discussed between -- I
9 don't know who it's from. It says here
10 with a copy to William Randolph who was my
11 attorney at the time. I'm not sure if this
12 was generated by my attorney or his
13 attorney or him or me. But it seems to be
14 clearly discussing indemnification that I
15 would provide.

16 Q. Was it your understanding that
17 this document, Rigos 210 and 211, is a
18 draft of the indemnification agreement you
19 agreed to provide Mr. Rigos for being the
20 guarantor?

21 A. I know I indemnified him in
22 writing. I don't remember if this is the
23 draft. I know I indemnified him in writing
24 and agreed to indemnified him of all
25 responsibility regarding the guarantee.

1 R. DiSPIRITO

2 Q. When you say you agreed to
3 indemnify him, was there a final document
4 that you signed that said --

5 A. Yes, yes, I think there was.

6 MR. BAILEY: Let him finish.

7 THE WITNESS: Sorry.

8 Q. Do you have a copy of that
9 document?

10 A. I'm sure I do somewhere.

11 Q. You think you have a copy
12 somewhere?

13 A. I think so, yes.

14 Q. Is there anyone else, to your
15 knowledge, who would have a copy?

16 A. If there was an E-mail to
17 Mr. Randolph then I imagine he would have a
18 copy. Do you know where this E-mail
19 originated from? Is this an E-mail?

20 Q. If you look at the documents we
21 have here, so this is a series of E-mails,
22 and then this Rigos 210 and 211 is
23 attached, so the first I asked you about
24 says, you know, the guarantee and
25 indemnification look good. If you want to

1 R. DiSPIRITO

2 take time and look through the E-mails, if
3 you go to Rigos 209, which comes right
4 before 210 and 211.

5 A. Okay. You are saying this was
6 attached to that E-mail?

7 Q. Well, if you look at the
8 E-mail, there's an E-mail from you, this is
9 Rigos 209 from you.

10 A. Right, okay, yes.

11 Q. John Rigos dated November 11,
12 2014.

13 A. Right.

14 Q. Subject indemnification
15 agreement, and then it has DiSpiRito
16 compared docs, so my question to you is, is
17 it your understanding that you were
18 forwarding this draft indemnification
19 agreement that's Rigos 210, 211 to
20 Mr. Rigos?

21 A. It's hard to say. I remember
22 that there was an indemnification. I don't
23 know if this is the document that ended up
24 becoming that indemnification. But it
25 looks familiar and I again know there was a

1 R. DiSPIRITO

2 signed document, so...

3 Q. Let me just sort of rephrase
4 it. Is it your understanding that the
5 document that is Rigos 210 and 211 was
6 attached to your E-mail that's on page
7 Rigos 209?

8 A. It's really hard for me to
9 remember. The way it's presented here, it
10 looks like it was attached. But I can't
11 say for sure. I will take your word for it
12 if you are saying this was in the E-mail, I
13 believe you.

14 Q. It's not for you to take my
15 word. I can only present to you the
16 documents and ask you your understanding.

17 A. My understanding is this is
18 probably a draft of the indemnification.

19 Q. And you believe that you have a
20 final signed copy of that indemnification
21 somewhere?

22 A. Yes.

23 Q. Where would you keep that?

24 A. It's probably in an E-mail
25 somewhere.

1 R. DiSPIRITO

2 Q. Sorry?

3 A. It's probably in an E-mail
4 somewhere, it's probably a PDF document.

5 Q. Has Mr. Rigos asked for a copy
6 of this?

7 A. Has he asked me for a copy?

8 Q. Yes.

9 A. Recently, you mean?

10 Q. At any time.

11 A. I imagine at the time we signed
12 it there were copies circulated. I don't
13 remember discussing it since then.

14 Q. Do you remember since this
15 lawsuit -- well, do you remember in 2021 or
16 2022 sending him a copy of it?

17 A. I don't remember that, no.

18 Q. Has Mr. Rigos made any kind of
19 request to you since this lawsuit started
20 that you comply with that indemnity
21 agreement and indemnify him?

22 A. I don't remember making any
23 specific request.

24 Q. Have you discussed the
25 indemnity agreement with him since this

1 R. DiSPIRITO

2 lawsuit started to since the last year or
3 two?

4 A. I don't think so. I don't
5 remember discussing it with him.

6 Q. Have you discussed that
7 indemnity agreement with anyone other than
8 your attorneys?

9 A. I don't think so.

10 Q. Is it your intention to
11 indemnify Mr. Rigos for any damages and
12 attorneys' fee that he incurs in this
13 lawsuit?

14 MR. BAILEY: Objection to form.
15 You may answer.

16 A. I'm not sure I understand the
17 ramifications of the question and answer.
18 I would rather not answer. I don't know
19 without talking to my attorney what I
20 agreed to. But I did sign an
21 indemnification agreement and I stand by
22 whatever was written in that agreement.

23 Q. So you plan to honor that
24 agreement?

25 A. Yes, I am.

1 R. DiSPIRITO

2 Q. I'm aware that Flavorworks
3 Trucks is in bankruptcy, but have any other
4 entities that you have been an owner or
5 membership of ever been in bankruptcy?

6 A. Since -- no, not before
7 Flavorworks Trucks that I know of, and
8 since then one other entity.

9 Q. What entity is that?

10 A. Flavorworks, Inc.

11 Q. Have you ever filed a personal
12 bankruptcy?

13 A. No.

14 Q. So I think that's about it for
15 me. I would like to just take about two
16 minutes and look over my notes and see if I
17 have any other questions. So if we could
18 go off the record for just two minutes and
19 I will resume shortly.

20 (Whereupon, an off-the-record
21 discussion was held.)

22 Q. One last question. Have you
23 had any discussions with Mr. Rigos in the
24 last few months about your operations?

25 A. About the operations per se, I

1 R. DiSPIRITO

2 don't think so, no.

3 Q. Then I believe you said you're
4 still operating?

5 A. Yes.

6 Q. And you have one employee?

7 A. Yes.

8 Q. And you intend to continue
9 operating?

10 A. Yes.

11 Q. Is that something you have
12 discussed with Mr. Rigos?

13 A. I don't think so.

14 Q. Have you had any recent
15 discussions with Mr. Rigos about him
16 participating in your business?

17 A. Not per se, no.

18 Q. Sorry?

19 A. Not per se.

20 Q. When you say, "not per se",
21 what does that mean?

22 A. I mean --

23 MR. BAILEY: That's a different
24 restaurant.

25 A. Yes. I have had discussions

1 R. DiSPIRITO

2 with him but I don't believe we discussed
3 these operations.

4 Q. So you have had recent
5 discussions with Mr. Rigos about other
6 business ventures?

7 A. Other business -- I guess we
8 had a discussion about -- actually, I don't
9 think we did, no, I don't think we had a
10 recent discussion about other business
11 interests.

12 Q. Do you have any current plans
13 to go into business with Mr. Rigos?

14 A. Current plans as I sit here
15 now?

16 Q. Have you discussed any plans to
17 go into business with Mr. Rigos within the
18 last six months?

19 A. No, I haven't.

20 Q. Would you consider your
21 relationship with Mr. Rigos to still be a
22 good relationship?

23 A. It would be me impossible for
24 me to characterize our relationship from
25 this side of the street.

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R. DiSPIRITO

Q. Well, can you give me any
opinion as to where you think you and
Mr. Rigos stand now?

A. We're cordial, polite and
respectful.

(Whereupon, at 1:00 p.m. the
Examination of this witness was
concluded.)

° ° ° °

1 R. DiSPIRITO

2 D E C L A R A T I O N

3
4 I hereby certify that having been
5 first duly sworn to testify to the truth, I
6 gave the above testimony.

7
8 I FURTHER CERTIFY that the foregoing
9 transcript is a true and correct transcript
10 of the testimony given by me at the time
11 and place specified hereinbefore.

12
13
14

15 ROCCO DiSPIRITO

16
17
18 Subscribed and sworn to before me
19 this ____ day of _____ 20 ____.

20
21

22 NOTARY PUBLIC

R. DiSPIRITO

E X H I B I T S

PLAINTIFF EXHIBITS

EXHIBIT	EXHIBIT	PAGE
NUMBER	DESCRIPTION	
Exhibit 1	Subpoena to Testify At a Deposition in a Civil Action Rocco DiSpirito	17
Exhibit 2	Subpoena to Produce Documents Directed to Flavorworks Trucks LLC	17
Exhibit 3	Agreement of Lease	18
Exhibit 4	Declaration of John Z. Rigos	50
Exhibit 5	Exhibit 3 (Bates stamp Rigos 204 - 211)	71

(Exhibits retained by Counsel.)

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INFORMATION AND/OR DOCUMENTS	PAGE
(None)	
QUESTIONS MARKED FOR RULINGS	
PAGE LINE QUESTION	
(None)	

R. DiSPIRITO

C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF NASSAU)

I, FRANCINE DELFINO, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 20th day of December 2022.

Francine Delfino

FRANCINE DELFINO

CASE NAME: Cuculich, Steven A., Et Al. v. Rigos, John Z.
DATE OF DEPOSITION: 12/19/2022
WITNESSES' NAME: Rocco Dispirito

[illegible]

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____, 20____.

MY COMMISSION EXPIRES:

[& - alliance]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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